



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2004

Mr. Les Moore
Police Legal Advisor
Irving Police Department
305 North O'Connor Road
Irving, Texas 75061

OR2004-3726

Dear Mr. Moore:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200944.

The Irving Police Department (the "department") received a request for information regarding case #03-217. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, among the documents you seek to withhold is an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Under section 550.065(c)(4) of the Transportation Code, accident reports completed pursuant to chapter 550 must be released to any person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. Here, the requestor has provided the department the date of the accident and the name of a person involved. Thus, because two of the three requirements under section 550.065(c)(4) have been satisfied, you must release the accident report to the requestor.

Second, among the documents you seek to withhold is an Affidavit for Evidentiary Search Warrant. An executed search warrant affidavit is made public by statute. *See* Code Crim.

Proc. art. 18.01(b). As the search warrant has been executed, the submitted search warrant affidavit must be released in its entirety.

Third, among the documents you seek to withhold is an arrest warrant affidavit. Article 15.26 of the Code of Criminal Procedure states “[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information.” Thus, if the arrest warrant affidavit was presented to a magistrate in support of the issuance of an arrest warrant, the department must release the affidavit.

Fourth, among the information you seek to withhold are several documents that have been filed with a court, such as the Affidavits for Determination of Probable Cause. Information filed with a court is generally a matter of public record that cannot be withheld from disclosure. Gov’t Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, under section 552.022 these public court documents must be released to the requestor, unless they are confidential under other law. Sections 552.103 and 552.108 are a discretionary exceptions under the Public Information Act, and are therefore not “other law” that makes information confidential. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive section 552.108). Therefore, these documents must be released to the requestor pursuant to section 552.022.

We now address your claimed exceptions with respect to the remaining information. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested offense report relates to the pending criminal prosecution of two co-defendants. Based on this representation, we conclude that the release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold the requested information from disclosure based on

section 552.108(a)(2).¹ We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

To summarize, (1) the accident report must be released under section 550.065 of the Transportation Code, (2) the executed search warrant must be released under article 18.01 of the Code of Criminal Procedure, (3) the arrest warrant affidavit must be released under article 15.26 of the Code of Criminal Procedure, (4) all the documents filed with the court must be released in their entirety under section 552.022 of the Government Code, (5) under section 552.108(c) of the Government Code, the basic information in the offense reports must be released, and (6) under section 552.108(a)(1) of the Government Code, the department can, in its discretion, withhold the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).


¹Because we are able to resolve this under section 552.108, we do not address your argument for exception under section 552.103. We note that basic information is not excepted from release under section 552.103. *See* Open Records Decision No. 597 (1991).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 200944

Enc. Submitted documents

c: Ms. Carla Kelly
612 Sunny Lane
Irving, Texas 75060
(w/o enclosures)